

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

V.

MARK CUBAN,

Defendant.

Civil Action No.: 3-08-CV-2050-D (SAF)

OPPOSITION TO MOTION FOR CONTINUANCE

Plaintiff Securities and Exchange Commission (“SEC”) opposes the trial delay sought by Defendant Mark Cuban’s Motion for Continuance (ECF No. 179).

As Cuban recognized, the Court, by Order dated November 9, 2012, set this matter for trial on the two-week docket of June 17, 2013 (ECF No. 168). Neither Cuban nor his counsel identified any actual or potential conflict for four months following entry of that Order. Now, scarcely three months before the Court-ordered trial date, Cuban and his counsel have identified conflicts that they claim will necessitate at least two months of delay (and more, as the dates they now propose in the last two weeks of August are, not surprisingly, dates when witnesses are unavailable). Cuban offers no reasonable justification for his delay in raising these conflicts.

Moreover, Cuban's motion omits that – despite the late notice and the conflicted counsel's seemingly minor role played in this litigation to date – the SEC proposed an

accommodation of a one-week continuance to resolve counsel's conflict.¹ By filing the pending motion, Cuban and his counsel rejected the SEC's accommodation.

While the SEC respectfully defers to the Court in setting an appropriate trial date, it nonetheless opposes Cuban's motion and submits that the trial should proceed consistent with the current Order. If the Court determines that the trial should be continued to a later date, the starting point obviously would be the trial calendar options available to the Court, with conflicts, if any, then identified by the parties.

Dated: March 15, 2013

Respectfully submitted,

Toby M. Galloway
Texas Bar No. 00790733
Securities and Exchange Commission
Burnett Plaza, Suite 1900
801 Cherry Street, Unit 18
Fort Worth, TX 76102
(817) 978-6447

s/Kevin P. O'Rourke
Kevin P. O'Rourke (D.C. Bar No. 254920)
Duane K. Thompson (D.C. Bar No. 376180)
Julie M. Riewe (D.C. Bar No. 472470)
Adam S. Aderton (D.C. Bar No. 496247)
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549
(202) 551-4442 (O'Rourke)
orourkek@sec.gov

*Attorneys for Plaintiff
Securities and Exchange Commission*

¹ Though the SEC gave Cuban's numerous conflicts arising from his Hollywood production schedule and other business activities due consideration, it could not consent to the delay necessary to accommodate such conflicts.

CERTIFICATE OF SERVICE

On March 15, 2013, I electronically submitted the SEC's Opposition to Cuban's Motion for Continuance with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/Adam S. Aderton

Adam S. Aderton